



# Employment Security Department

WASHINGTON STATE

## Understanding the Employer Reporting Requirements of Unemployment Insurance for the Theatre and Entertainment Industry

Recent media coverage and concern from citizens has sparked an interest in how theatre and entertainment industry personnel should be reported for Unemployment Insurance Tax purposes. Under current laws, most individuals working in the theater and entertainment industry are considered employees and their wages should be reported to the Employment Security Department (ESD). However, there are exceptions. In considering whether taxes should be paid on an individual's wages, the department applies an Employment Exception Test. This test helps us decide whether the individual is an employee, a volunteer, or an independent contractor. *(See reverse side for tests in determining an Independent Contractor.)*

- **Payments to your employees for services rendered are always considered wages.**

This is defined as "covered employment." Wages may be used to qualify employees for Unemployment Insurance benefits.

- **Payments to workers for services rendered are not considered wages if:**

- Services are performed by an Independent Business or Contractor.
- Reimbursing a volunteer for receipted expenses.

This is defined as "non-covered employment." The exception test in RCW 50.04.140 is used to determine if the person and/or their employees are covered or not covered for unemployment benefits.

---

### Questions & Answers

#### *Based on Current Law*

- Q. Our actors are paid a small fee for their efforts.**

**This is a hobby for them, and they have "regular jobs." Why would we pay taxes on these fees?**

- A. *Unless the actors meet the requirements of the independent contractor test in RCW 50.04.140, the fee is considered reportable wages.*

- Q. We do not pay wages, just stipends or honorariums. Are these reportable as wages?**

- A. *Yes. These payments would be considered wages or payroll under RCW 50.04.320.*

- Q. Our workers are part-time. They are artists, set designers, seamstresses, etc. and are independent contractors. What is the difference between an employee and an independent contractor?**

- A. *An employee is someone you hire, supervise, and pay money or some form of compensation to perform a particular job. An independent contractor is a separate business you hire to perform a job, but you do not supervise them. (See reverse side.)*

- Q. Our workers have contracts agreeing that they are self-employed or independent contractors. Are these individuals reportable?**

- A. *Please see the "Independent Contractor" assessment on the reverse side. If this test does not apply, their wages must be reported. RCW 50.40.010(1) says "Any agreement by an individual to waive, release, or commute his or her rights to benefits or any other rights under this title shall be void."*

- Q. When will ESD audit my business?**

- A. *ESD does not target certain industries for audits. An audit could be performed under any of the following circumstances:*
- (1) Federal law requires ESD to randomly audit a slice of various businesses and locations; or*
  - (2) A benefit claim is filed which states you were the employer, but wages were not reported when they should have been; or*
  - (3) ESD has received information that indicates you may have unreported or underreported wages; or*
  - (4) You request a voluntary audit with the understanding that any penalties and interest would usually not be assessed.*

- Q. Do all small theatre companies operate the same?**

- A. *No.*
- (1) Some have full-time staff who are employed to do the administration, directing, ticket sales, etc.*
  - (2) Some have other workers who build sets, sew costumes, play music, and act in plays.*
  - (3) Some pay employment taxes on their performers who are members of an arts guild or union, but not on other performers.*
  - (4) Some pay employment taxes on their actors, but consider the set builders and designers to be independent contractors.*
- The different situations described depend on whether there is an employment relationship by law, or whether the person is truly an independent contractor.*
-

# INDEPENDENT CONTRACTOR

The following questions help determine if the individual you pay is an independent contractor.

## 1. Are you hiring someone for more than personal labor?

This is someone who:

- Brings his or her own employees to perform the work and you are not supervising them.
- Brings more than "ordinary hand tools" to the job and you are not supervising the work. Examples include props, costumes, instruments, etc.

*If you answered "Yes" to one of the two scenarios above, then unemployment insurance tax is **NOT** due. If "No," see question #2.*

## 2. Are you supervising the individual's work?

- Are you only scheduling and inspecting the work?

*If you answered "Yes" to this question then you are considered "not supervising" and unemployment insurance tax is **NOT** due.*

- Are you telling your worker or a subcontractor's workers how to do the job, assigning tasks, training, keeping time sheets, paying a wage, or setting regular hours?

*If you answered "Yes" to this question, then you are supervising and required to pay unemployment insurance tax. If "No," see question #3.*

## 3. Do workers have an established business of their own?

- **Supervision:** Do they perform the work free of your direction and control?
- **Business office:** Do they maintain and pay for a place of business that is separate from yours?
- **Previously established business:** Do they have an established, independent business that existed before they worked at your business? Evidence may include other customers or advertising.
- **State and Federal taxes:** When you entered into the work arrangement, were they responsible for filing Federal taxes or other taxes to appropriate state agencies?
- **Required registrations:** Do they have all required registrations, such as a UBI number or a contractor registration number?
- **Maintains books:** Do they maintain a set of books dedicated to the expenses and earnings of the business?

*If you answered "Yes" to ALL SIX bullets above, then unemployment tax is **NOT** due.*

---

### Related Revised Codes of Washington (RCW):

RCW 50.04.100 Employment

RCW 50.04.140 Employment -- Exception tests

RCW 50.04.148 Employment -- Services performed  
by musician or entertainer

RCW 50.04.320 Wages, remuneration

RCW 50.40.010 Waiver of rights void

---

**For more information, please contact your local District Tax Office  
or visit our website at [tax.go2ui.com](http://tax.go2ui.com).**